IN THE HIGH COURT OF JUDICATURE
AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.621 OF 2002

1. Ranjana Baban Misal, Age, 35 years
2. Nivrutti Pandurang Kokate, Age 40 years
3. Bharat Chnagdeo Misal, Age 30 years
4. Pandurang Baban Misal, Age 18 years ...Petitioner

All Residents of Wagholi, Tal: Malsiras, Dist: Solapur.

Vs.

The State of Maharastra ...Respondent

Mr. D.G. Khamkar, Advocate for the Appellants
Mrs. G.P. Mulekar, A.P.P for the State

CORAM: SHRI D.G.DESHPANDE &
SMT. ROSHAN DALVI, JJ.
DATED: 22ND NOVEMBER, 2006

JUDGMENT (PER SMT. ROSHAN DALVI, J.)

1. The Appellants have been charged, convicted and sentenced for having committed offence under Section 302 and 201 r.w. Section 34 of I.P.C by committing murder of one Baban Misal with a scythe in the night between 9th July, 1998 and 10th July, 1998 and buried him in his agricultural land, a short distance from his house.

2. The Appellant No.1 was his wife. She has since expired. The learned Special P.P made a statement before us that she

was in custody in Yerwada Prison and had suffered from a paralytic attack for which she was given treatment at Sassoon Hospital where she expired. Appellants 2 and 3 are alleged to be her paramours. Appellant no.4 is the son of Appellant No.1 and the deceased. He has other siblings one of which has been examined as an eye witness to the incident.

3. It is the prosecution case that Ranjana, Appellant no.1 carried on extra marital affairs with Appellants 2 and 3. They together with her son committed the murder of the deceased Baban and disposed of his dead body by burying it in his own agricultural land near his house and by disposing of the blood, blood stained clothes and other articles.

4. The case of the appellants/ accused is of denial. It is contended on their behalf by their learned Advocate Mr.Khamkar that the evidence is riddled with omissions and contradictions and the main evidence of P.W.13, the eye witness who is a child witness cannot be relied upon. It is further contended by him that the recovery of the dead body as well as the articles and the scythe at the instance of the Appellants cannot be relied upon. He has taken us through the evidence of most of the witnesses in an attempt to show the omissions which are argued to be fatal to the prosecution

case. His main argument is that the daughter of the deceased P.W.13 who was then about 12 or 13 years of age could not have given the evidence that she has and that it is accentuated by an oblique motive. He has argued that it was not conceivable how a child could have been kept in the house to witness the entire incident in as much detail as she has. He has therefore, argued that her evidence, detailed as it is, and having been recorded over a period of 3 days, suffers from the lacuna of being tutored. He has also argued that it has been left uncorroborated by the evidence of other family members, more specially her brother and sister who were otherwise residing in the house, or even neighours. The learned Advocate has taken us laboriously through each aspect of the evidence to show how portions of evidence which could have been corroborated by other witnesses has not been so done.

5. This case follows upon the complaint of the missing report filed by the nephew of the deceased. When the investigation into the missing report was under way the FIR came to be filed. The learned Advocate for the Appellants/accused has urged before us that the FIR, therefore, does not in fact constitute the first information report of the offence for which the Appellants were charged.

6. The learned A.P.P has argued before us that the main evidence of the star witness of the prosecution P.W.13 who was an innocent child at that time, but capable of deposing about the incident that transpired before her eyes and in her presence is required to be wholly believed. The learned A.P.P has further argued that the FIR does not lose its importance and value merely because it is recorded after the missing report and after part of the investigation came to be carried out and even completed before the FIR in this case was lodged. She was shown that the complainant had no contact with the IO in the case and consequently did not know about the progress of the inquiry under the missing report. Hence the FIR forms the basis of this case.

7. The learned A.P.P has further relied upon the factum of the disposal of the dead body of the deceased as well as the various incriminating articles which were blood stained resulting in the commission of the crime under Section 201 of the IPC as also the factum of the ultimate recovery of the dead body three and half months after the incident of murder and the recovery of the weapon at the instance of one of the Appellants. She has drawn our attention to the evidence of various panchas leading to such discoveries as well as the inquest panchanama showing the condition of the dead body of the deceased and the evidence of the

Medical Officer through whom the P.M. Report made by another Medical Officer, was proved.

8. The learned Advocate for the Appellants/accused has drawn our attention to the scientific evidence of the Medical Officer P.W.14 relating to the injuries suffered by the deceased shown in the P.M. Report prepared by another Doctor and the evidence recorded on behalf of the accused in the trial Court by way of cross examination of the said Medical Officer relating to the decomposition of the buried body.

9. It, therefore, falls upon us to essentially consider the evidence of P.W.13 the child witness, and see how in material particulars it is corroborated or can be accepted without such corroboration, and the factum of the initiation of this case after a missing report was filed earlier and the recording of the statements of the witnesses more specially P.W.13 after a delay of about 3 days. It is further required to consider the evidence relating to the disposal of the dead body as well as an incriminating articles by the accused/Appellants and the recovery of the dead body, the weapon as well some of the articles at the instance of some of the Appellants and the consequent report of the Chemical Analiser relating to the blood stains thereupon.

10. It would be prudent to consider the main evidence of P.W.13 first. She has given her relationship with Appellants/accused Nos.1 and 4 which is an admitted fact. She has deposed that she knew Appellant nos.2 and 3 and how she came to know them. She has deposed about the relationship her mother had with both of them. Paragraph no.2 of her evidence shows how they used to come in the house after her father left and go away before her father's return. Her deposition also shows that her mother did not allow her to come in the house whilst they were in.

11. Paragraph No.3 of her evidence shows an incident when her father suddenly came into the house and saw accused no.3 sitting touching her mother, resulting in quarrel and assault by her father upon her mother. Her evidence further shows that Appellants 2 and 3 came one after the other to the house and had illicit relations with her mother resulting in perpetual quarrels between her parents.

12. Her further evidence in paragraph 3 shows about a otherwise unrelated incident of her mother contaminating the food (Bhakri) of her father with an ash like powder which she did not allow her children to eat. Her father, being suspicious did not eat and later refrained from eating in the

house. He then had his food in the house of his brothers Purshottam and Laxman (both to whom have not been examined).

13. Her evidence about the incident for which the Appellants are charged is narrated in paragraphs 5 to 7 of her deposition. She has given the date as well as the day of the week on which it occurred. Her deposition shows that at 8.00 a.m her father left the house. Her brother, Appellant no.4, took the scythe in the house for sharpening and returned with it and kept it under the bed. Her mother told her as well as her elder sister Anjana who had come for delivery that she would kill their father and threatened them not to tell any one or she would kill them also the same way.

14. At 9.30 p.m her father returned home. He was drunk. Her brother had brought and kept three liquor bottles in the home which were given by her mother to her father. After her father was fully drunk her mother called all the three other accused in the room where he was sleeping. Her elder sister was asked to sit near the 'Tulsi' outside. The doors and windows were closed from inside.

15. She witnessed the incident, which she deposed in paragraph no.6. Her deposition shows that Appellant no.3

took out the scythe from under the bed. Her brother caught her father's legs, appellant no.2 caught her father's hands, her mother sat on the abdomen of her father. Appellant no.3 gave two blows of scythe on the side of the neck of her father. Her father cried out “Mother”. He sustained bleeding injuries on the left side of his neck and convulsions for 5 to 10 minutes after which he expired.

16. It may be mentioned straight way that the narration of the incident is to the last detail. It is vividly descriptive. A child of about 12 years who is at an impressionable age with a photographic memory has narrated it after about 3 years in the Court. This not an incident which any child can forget for a long time.

17. The incident must be tested in the background in which the offender as well as the victim lived. They were husband and wife. They had several children. The husband used to be a consummate alcoholic. The wife had extra marital affairs. Her son has fully sided with the mother in the offence. He played an important part in doing away with his father. It is argued on behalf of the Appellants that it is not possible for the son of the deceased to be a party to his father's murder. However, a lot of what a male child would go through, having an alcoholic father may have to be

considered. That itself may have resulted in affairs by his mother. The fact remains that P.W. 13 was his younger sister. She was used to the prior conduct of both the parents. She knew first hand the relationship between her mother and her paramours. This is a classic case of two children accepting the conduct of their parents differently. It is as much unique for the daughter to depose against her mother as it is for the son to abet the mother in the murder of his father in unison with his mother and her paramours. It is in this light that the evidence of P.W.13 of the vivid description of the offence would require consideration. The learned A.P.P rightly argued that the child witness had already lost her father. She would also lose her mother. Yet she has made bold to narrate the entire incident, though she would, in fact, become an orphan thereby. There is therefore, no reason to discard her evidence. The motive for the offence is made clear. That has culminated in such result.

18. The learned Advocate of the Appellants drew our attention to the part of the evidence showing the actual wielding of blows by appellant no.3 on the left side of the neck of the deceased with the scythe. He took us through the Postmortem report Exhibit-53 which showed only one incised fatal would on the left side of the neck extending

from the thyroid cartilage to the right angle of the mandible which is 17cms. X 7 cms. X 10 cms.. He argued that the evidence showing two blows is therefore not corroborated and in fact contradicted by the one injury shown in the Postmortem report. What is material to consider is that the blow is stated to be with a sharp edged weapon. It is exactly where the witness has deposed, being on the left side of the neck. The length of the injury shows the use of the weapon like a scythe which is deposed to have been used. The injury therefore, perfectly corroborates the evidence. A little anomaly in the evidence relating to the number of blows cannot disturb the evidence relating to the type of the blow and the extent of the injury at the same place as deposed by the witness.

19. The cause of death is stated to be cardio-respiratory arrest due to cut blow on the left side of the neck and haemorrhage due to such injury. The report shows blood vessels, nerves, muscles, trachea and oesophagus etc. gaping and cut. This tallies with the evidence relating to convulsions for 5 to 10 minutes preceding the death of the deceased.

20. This eye witness account read with the medical evidence makes an acceptable corroborated case.

21. It is around such evidence of the actual commision of the offence that the peripheral evidence relating to its preparation prior to the offence and causing its disappearance after the offence is required to be considered.

22. Paragraph 6 of the evidence of P.W. 13 shows that at 9.00 p.m on that day when her brother Appa went to sleep appellant no.3 carried a spade, Tikav and Patti and went out of the house. Then accused no.2 took accused no.4 to dig a pit. All this happened some time before the deceased returned to the house. The evidence of such preparation is to be appreciated along with the evidence of another witness P.W.7 the Panch who has deposed about the recovery of the instruments for digging a pit under the panchanama Exhibit-30. It is further supported by the factum of the dead body of the deceased being actually recovered from such pit during the course of the inquiry of the missing report.

23. The dead body of the deceased has been recovered from the pit dug in his agricultural land a little distance away from his residential home as deposed by P.W. 6 who was called by the Tahasildar of the Village for the purpose of recording the panchanama. He has deposed how the dead body was taken out from the pit and has given the

description of the dead body showing the extent of the decomposition. His deposition shows partial decomposition with eye balls not in the sockets and the throat half cut. The inquest panchanama was drawn in his presence. The inquest report Exhibit-28 shows the description of the body as deposed by the witness. It was in an identifiable condition, though removed about 3 months after its burial in the pit. The recovery of the dead body itself corroborates the evidence of P.W.13 as to the preparation for the crime by the Appellants with common intention.

24. Similarly her evidence relating to what happened after the crime was committed and her father expired is to be considered to see whether it stands corroborated by the recoveries made thereafter despite an attempt to cause the disappearance of the evidence. Such evidence is in paragraph no.7 of her deposition.

25. In paragraph 7 she has deposed that her mother/appellant no.1 washed the blood of the father with a bucket of water and cloth. Blood was collected in a bucket at that time. She poured it outside the house. The appellants spread chaddar on tiles. They put the dead body on the chaddar and put gunny bag on the dead body. They lifted it by holding the chaddar. They carried the body to

their field. They burried it in the pit there. They returned home. Appellants 2 and 3 went to their house. The Appellant no.1 locked the room where the deceased was killed and went to the hut to sleep. She went near her brother Appa, who had continued to sleep through the incident, and slept. This evidence is as concise and precise and as it is specific and vivid. It is neither embellished, nor embroidered. It is the evidence of a child who has seen through the unusual incident which could have happened before her eyes but once. She deposed it in minute detail, step by step.

26. It is contended that her evidence deserves to be rejected as she was a child witness, and close relative of the deceased who could have been tutored and would not give honest evidence. The learned Advocate on behalf of the Appellants/accused relied upon the case of Rajinder and others Vs. State of Haryana reported in AIR 2001 Supreme Court, 1380 in which the evidence of an interested witness who is also inimical to the accused was not accepted. It need hardly be said that P.W.13 is the child witness who needed at least one of her parents and lived with her mother. There is no animosity shown between her mother and her. In fact it must have been extremely traumatic for her to give the evidence which she has, even against her own mother, in the

face of the death of her father which is corroborated in all material particulars. There is no reason to discard her evidence.

27. This evidence finds corroboration in the main recovery of the case which is the dead body of the deceased from the pit in the agricultural land a short distance away from his own house. The body was recovered after about 3 months. The state of the body must therefore be seen.

28. The evidence of P.W.2 the panch shows the spot where the body was buried. The evidence of P.W.7 shows the recovery of the instruments for digging that pit. The evidence of P.W. 11 shows the purchase of 9 Kgs of salt by the Appellant no.4, the son of the deceased from his grocery shop. Since it was in large quantity he was justifiably surprised and asked the Appellant no.4 as to why that much salt was required. The Appellant No.4 purchased it for Rs.18/- . The deposition of P.W. No.11 shows that he had never purchased that much salt previously. Then he came to learn about the death of the deceased. It is common knowledge that salt is a preservative. A dead body in a hastily dugged pit which is not deep enough to allow oxygen and water to come in contact with the body would decompose it at considerable speed. The body was to be

concealed in the pit by burying it close to the house where two of the accused lived. It was therefore, that they took the essential and cheaply available preservative to be sprinkled lavishly upon the body. This is in fact the strongest possible circumstance of showing their common intention to commit the murder, which they committed within a short time.

29. Since the deceased had disappeared his nephew Baban Laxman Misal, who justifiably suspected foul play started his inquiry. His evidence as P.W. 1 shows how the inquiry into the whereabouts of the deceased began. He was told by Appellant No.4 himself that the deceased left his house at midnight because of quarrel between the spouses. They waited for 4 or 5 days for him to return. When he did not return he asked appellant no.1 why the deceased had gone away and was rebuffed that it was not his business to interfere in the relations between the spouses. His evidence has shown that she tried to side-track the issue by stating that she did not know the reason for her husband's disappearance or his whereabouts. After a search the deceased was not found. Hence he filed the missing report dated 30th July, 1998 was lodged on 31st July, 1998, Exhibit-60.

30. His deposition shows that even later inquiries with

appellant no.1 revealed nothing. She only stated that she did not know anything about her husband's disappearance. In fact she was “leading a happy life”.

31. In the normal circumstances the wife and/or eldest son of the deceased would have taken up on themselves the task of filing a missing report.

32. The missing report was followed by inquiries made with the relatives about the whereabouts of the deceased. Due to the previous known relations of the deceased and his wife, the brother of the deceased, including the father of Dilip who filed a missing report, came to be interrogated. The evidence of P.W.13 shows how the deceased was sleeping alone in the hut and eating in his brother's house. Hence, the extremely strained relations of the deceased with his wife were known to the relatives. The inquiry into the missing report would therefore, understandably center around the inmates of the house of the deceased.

33. Consequently it is seen that 3 weeks after the missing report was filed, the F I R in this case came to be lodged. The FIR is lodged by the same nephew examined as P.W.1 on 24th October, 1998. He was not in touch with the police during the inquiry of the missing report. Certain articles,

recoveries have been made which would be a pointer to the offence committed in this case before the FIR is lodged. That is the most natural investigation in the case of a person found missing and then shown to be murdered. In fact in such a case the FIR becomes wholly inconsequential.

34. It is argued on behalf of the appellants that since this was lodged well after some recoveries were made, it would lose the character of being a FIR and hence, no conviction can be based upon it. The learned Advocate for the Appellant/accused relied upon the case of Ashraf Hussain Shah Vs. State of Maharashtra reported in 1996 Cr. L.J. 3147 in which the FIR was not lodged for one and half hours though the complainant was in the police station. It was not the case of an FIR being lodged after a missing report. We do not see how that case applies to the present case.

35. Indeed several recoveries have been made prior to 24th October, 1998. After the filing of the missing report on 30th July, 1998 the inquiry led to the place of burial of the deceased in the field near his house about 150 ft. therefrom on 24th October, 1998. The evidence of P.W. 2 shows the spot where the body was buried. Thereupon on 24th October, 1998 itself the inquest panchanama Exhibit-28 was

prepared, as shown by the evidence of P.W. 6 and 10. Simultaneously on the same day the clothes of the deceased of snuff colour were seized from the field under the panchanama Exhibit-33 as shown from the evidence of P.W. 8. This led to the filing of the FIR on the same day by the nephew of the deceased Dilip Misal who had lodged the missing report also.

36. This FIR thereafter led to further investigation relating to the recovery of the blood stained articles from the residence of the deceased on 26th October, 1998 as deposed by the panch P.W.3. On the same day the scythe came to be recovered at the instance of Appellant no.3 as deposed by panch witness P.W.4 followed by the blood stained petticoat of Appellant No.1 recovered at her instance on the next day i.e. 27th October, 1998 as per the deposition of the panch witness P.W.5.

37. After the investigation proceeded the spade used for digging the pit came to be recovered at the instance of Appellant no.3 on 1st November, 1998 under the panchanama Exhibit-30 as per the deposition of the panch witness P.W.7.

38. The recovery of the scythe, led to still further

investigation leading to the shop from which it was purchased. P.W.9 is the shop keeper who sold the said weapon to Appellant no.3 on the date of the incident.

39. This was followed by another purchase made by Appellant No.4 of 9 Kgs of salt referred to earlier. The evidence of P.W. 11 shows that that was purchase on Guru-pournima day. The evidence is given a good three years after that day and hence, the English Calender date has not been recorded to show the purchase of salt. The factum of the purchase is established. The reason for the purchase being its preservative value also shows the intention of the accused.

40. All this evidence put together showing the various steps in investigation not only show the involvement of the Appellants but also the intention of each of them to make preparation for the offence by obtaining the weapon used in the commission of the offence of murder as also other articles used in the commission of the offence of causing disappearance of evidence. Each of the accused must be held liable for each of these acts, they having acted, with common intention, and actually having committed the offence of murder jointly as deposed by the eye witness.

41. The strongest possible corroboration of the evidence of the eye witness is available in the evidence of the Medical Officer P.W.14 who has produced the P.M. Report Exhibit-53 which shows the injury described earlier. The cross examination of the Medical Officer essentially relates to the putrification and the decomposition of dead bodies. The Medical Officer has deposed about the process of putrification and the extent of decomposition that can be caused due to various circumstances and its effects on the human body. The learned Advocate for the accused referred to the evidence showing the effects of putrification on the body to contend that the 3 months after the burial the body becomes unidentifiable. A careful reading of the medical evidence shows that the extent of decomposition varies with natural circumstances like soil, water and air and the depth of the grave. The evidence shows that the availability of air is a prime catalyst for putrification and the depth of the grave delays the putrification process. The body has been buried with a large quantity of salt for preservation. There is a conspicuous absence of this aspect in the cross examination. Consequently it was not known whether and to what extent the putrification process can be slowed down by such preservative. The fact remains that the inquest panchanama is prepared and shows an identifiable body. The initial effect of putrification, shown by the Medical

Officer had taken place. A foul smell was noticed. In fact that led the investigating team to the grave. The eyes had come out of the sockets. Yet the body was identifiable and an inquest panchanama is prepared. The Advocate for the appellants/accused drew our attention to the fact that the body has not been identified either by P.W.13, the eye witness, or by P.W.1, the complainant or the brother of the deceased Parmeshwar with whom the deceased messed during his last days. However, the evidence of the panch witness shows the deep cut on the left side neck of the deceased. This vicious cut fully corroborates the evidence of the eye witness showing how the fatal injury was caused to the deceased.

42. The prosecution case therefore is clearly based upon the direct evidence corroborated by various circumstances, and the medical report which clearly points to the acts of the accused. In fact, the examination of the P.W. 12 shows about how earlier an attempt of murdering the deceased was made upon payment of Rs.10,000/- by accused nos.1 and 2, but which need not be considered.

43. The cross-examination of these witnesses has not disturbed their evidence. The evidence of the star witness of the prosecution has not shown any material omissions or

contradictions.

44. The Advocate for the accused drew our attention to 2 other judgments, both of which do not apply to the facts of this case. The case of Makhan Singh Vs. State of Punjab reported in AIR 1988 Supreme Court, 1705 relates to the recovery of articles and dead bodies upon information received by the Investigating Officer before the accused made any voluntary statement under Section 27 of the Evidence Act. It has been held that the exclusive knowledge to the accused of the bodies being buried cannot be attributed on the basis of such recovery.

45. In the case of Pohalya Motya Valvi Vs. State of Maharashtra reported in AIR 1979 Supreme Court, 1949 it was held that when one out of two persons charged with murder concealed the weapon, he alone can be taken to have knowledge of the place where it was hidden and when such recovery is capable of two constructions the one beneficial to the accused will have to be adopted.

46. The evidence in this case has been correctly martialled by the learned trial Judge and makes out a clear case of involvement of all the accused. The conviction and sentence against each of the appellant/accused is therefore, maintained.

Appeal dismissed.

(SMT.ROSHAN DALVI, J.) (SHRI. D.G.DESHPANDE, J.)